

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD N. ANDERSON

Appeal No. 1999-1787
Application 08/797,521

ON BRIEF

Before COHEN, FRANKFORT and NASE, Administrative Patent
Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final
rejection of claims 1 through 8 and 21 through 29, which are
all of the claims remaining in this application. Claims 9

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through 20 have been canceled.

Appellant's invention relates to a Venetian blind, and more specifically to ladder and lift cord arrangements for Venetian blinds. A copy of representative claims 1, 24 and 28 on appeal, as reproduced from the Appendix to appellant's brief, is attached to this decision.

The sole prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Simon	5,060,709	Oct. 29,
1991		

Claims 25 and 27 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite.

Claims 1 through 8 and 21 through 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Simon.

Rather than reiterate the examiner's full statement of the above-noted rejections and the conflicting viewpoints

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advanced by the examiner and appellant regarding those rejections, we make reference to the examiner's answer (Paper No. 12, mailed December 21, 1998) and supplemental answer (Paper No. 14, mailed March 5, 1999) for the reasoning in support of the rejections and to appellant's brief (Paper No. 11, filed December 1, 1998) and reply brief (Paper No. 13, filed February 22, 1999) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, this panel of the Board has given careful consideration to appellant's specification and claims, to the applied prior art reference, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have reached the determinations which follow.

Looking first to the examiner's rejection of claims 25 and 27 under 35 U.S.C. § 112, second paragraph, we note that on page 4 of the brief appellant has agreed with the examiner that claims 25 and 27 include a recitation to "the left cord,"

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which recitation has no proper antecedent basis. While appellant has also suggested possible corrective language (i.e., that "the left cord" in each instance should be "the lift cord"), we observe that no amendment has been filed requesting or making any such correction. Accordingly, the examiner's rejection of 25 and 27 under 35 U.S.C. § 112, second paragraph, is sustained.

Considering next the examiner's prior art rejection of the appealed claims relying on Simon, we observe that independent claim 1 on appeal is directed to a Venetian blind of the type generally seen in Simon, with the exception that appellant's claimed blind has a requirement of:

"at least one of said lift cords being interwoven with the cross rungs of an associated one of said ladders while remaining between the riser cords of the associated ladder substantially along the entire length of said riser cords."

The examiner has urged (answer, page 3) that Simon discloses lift cords (18, 19, 32, 33) which are illustrated as being interwoven with the cross rungs (34) of the Venetian blind therein, and appellant likewise indicates (brief, page

4) that Simon shows lift cords with such a relationship. However, appellant has additionally argued that Simon teaches interweaving the lift cord with a riser cord of the associated ladder, wherein the lift cord is wrapped around the riser cord at predetermined intervals so that at times the lift cord lies outside the riser cord and at other times it lies on the inside of the riser cord and thus between the riser cords of the associated ladder. This interweaving of the lift cord and the riser cord in Simon gives rise to appellant's argument (brief, page 7) that Simon does not teach or suggest that the at least one lift chord which is interwoven with the cross rungs of a given ladder also remains "between the riser cords of the associated ladder substantially along the entire length of the riser cords," as in claim 1 on appeal. This aspect of appellant's invention is shown in Figures 5 and 6 of the application drawings and described on pages 5 and 6 of the specification as being a preferred embodiment.

Realizing that the lift cords in Simon do not remain between the riser cords of the associated ladder substantially along the entire length of the riser cords as specified in

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appellant's claim 1, the examiner urges that one of ordinary skill in the art would have recognized the benefits of not wrapping the lift cords therein about the riser cords "if frictional engagement of the lift cord with the riser cord obstructed the accumulation of the slats and as such, this feature is not seen as constituting a patentable distinction" (answer, page 3). Like appellant, we view the examiner's treatment of claim 1 on appeal as being based on total speculation and conjecture and as providing an impermissible hindsight reconstruction of the claimed subject matter based solely on appellant's own disclosure. For that reason, we will not sustain the examiner's rejection of claim 1 on appeal, and the claims which depend therefrom (i.e., claims 2 through 8 and 21 through 23), under 35 U.S.C. § 103(a) based on Simon.

Independent claim 24 on appeal defines a Venetian blind wherein the lift cords are intertwined with the riser cords "along both the front and rear edges of said slats." In treating independent claim 24 on appeal, the examiner has taken the position (answer, page 4) that eliminating the loops

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(31) of Simon together with their function and to intertwine the lift cords at the rear of the slats with the riser cords would have been obvious to one of ordinary skill in the art. Absent any teaching, suggestion or evidence thereof, we must disagree with the examiner's proposed modification of Simon and his conclusion of obviousness based on Simon. In this regard, like appellant, we note that the mere fact that the prior art could be modified in the manner urged by the examiner would not have made such modification obvious unless the prior art suggested the desirability of the modification. See In re Gordon, 773 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984) and In re Fritch,

972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783-84 (Fed. Cir. 1992). Again, it is our opinion that the examiner has impermissibly drawn from appellant's own teaching and fallen victim to what our reviewing Court has called "the insidious effect of a hindsight syndrome wherein that which only the inventor has taught is used against its teacher." W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 313 (Fed. Cir. 1983). Since we have determined that the

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examiner's conclusion of obviousness is based on hindsight reconstruction using appellant's own disclosure as a blueprint to arrive at the claimed subject matter, it follows that we will not sustain the examiner's rejection of claim 24 Simon.

Claims 25 through 27 depend from claim 24. Accordingly, since the teachings and suggestions found in Simon would not have made the subject matter as a whole of independent claim 24 obvious to one of ordinary skill in the art at the time of appellant's invention, it follows that dependent claims 25 through 27 would likewise have been unobvious over Simon. Therefore, we also refuse to sustain the examiner's rejection of dependent claims 25 through 27 under 35 U.S.C. § 103(a).

The last of the examiner's rejections for our review is that of claims 28 and 29 under 35 U.S.C. § 103(a) based on Simon. Independent claim 28 is directed to yet another aspect of appellant's Venetian blind wherein the slats of the blind include substantially vertically aligned notches in the rear edges thereof and wherein the aligned notches have positioned therein "a riser cord and a lift cord." While the examiner's

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position with regard to claims 28 and 29 is not entirely clear, suffice it to say that Simon provides no teaching or suggestion of vertically aligned notches in the rear edges of the slats therein wherein said notches have positioned therein a riser cord and a lift cord. The lift cords along the rear edges of the slats in Simon are received in loops (31) that are attached to the rear ladder or riser cords at the location of the rungs (34). These loops are said (col. 3, lines 13-18) to guide the rear lift cords and ensure alignment of the ladders with the lift cords. As is apparent from Figures 2-4 of Simon, while the ladder or riser cords (15, 21) may be received in notches (36, 38) on the slats, the lift cords (19, 33) are not carried in the notches. Thus, the examiner's rejection of claims 28 and 29 under 35 U.S.C. § 103(a) based on Simon will not be sustained.

In addition to the foregoing treatment of this case, we are also compelled to REMAND the application to the examiner for consideration of the Judkins patent (No. 5,573,051, filed Feb. 6, 1995) and the patent to Chi Yu (No. 4,951,729), both cited by appellant in the Information Disclosure Statement

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filed April 24, 1997 (Paper No. 2). In Figures 5 and 9, the Judkins patent, which is prior art by virtue of its filing date, appears to show subject matter corresponding to that set forth in appellant's claims 28 and 29 on appeal, while the patent to Chi Yu shows, in Figure 1, subject matter pertinent to appellant's claim 1 on appeal.

To summarize, we have affirmed the examiner's rejection of claims 25 and 27 under 35 U.S.C. § 112, second paragraph, but have reversed the examiner's rejection of 1 through 8 and 21 through 29 under 35 U.S.C. § 103(a) based on Simon. Thus, the decision of the examiner is affirmed-in-part. In addition, we are remanding this case to the examiner to consider certain designated prior art already of record in the application with regard to possibly making rejections of certain of the claims on appeal.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

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AFFIRMED-IN-PART AND REMANDED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
)	
)	BOARD OF PATENT
CHARLES E. FRANKFORT)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
JEFFREY V. NASE)	
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APPENDED CLAIMS

1. A Venetian blind comprising a plurality of parallel elongated slats having front and rear longitudinal edges, ladders including a pair of riser cords with one riser cord extending along the front edge of the slats and the other riser cord extending along the rear edge of the slats and spaced apart cross rungs for supporting said slats in vertically spaced apart relation, and lift cords for lifting said slats into closely spaced stacked relation and for lowering said slats into wider spaced relation, at least one of said lift cords being interwoven with the cross rungs of an associated one of said ladders while remaining between the riser cords of the associated ladder substantially along the entire length of said riser cords.

24. A Venetian blind comprising a plurality of elongated slats having ends and front and rear longitudinal edges, a plurality of ladders, each ladder including a pair of riser cords with one riser cord extending along the front edges of the slats and the other riser cord extending along the rear edge of the slats and spaced apart cross rungs for supporting said slats in vertically spaced apart relation, and lift cords for lifting said slats into closely spaced stacked relation and for lowering said slats into wider spaced relation, said lift cords being intertwined with said riser cords along both the front and rear edges of said slats.

28. A Venetian blind comprising a plurality of elongated slats having front and rear longitudinal edges, a plurality of ladders, each ladder including a pair of riser cords with one riser cord extending along the front edge of the slats and the other riser cord extending along the rear edge of the slats and spaced apart cross rungs for supporting said slats in vertically spaced apart relation, and lift cords for lifting said slats into closely spaced stacked relation and for lowering said slats into wider spaced relation, said slats further including substantially vertically aligned notches in said rear edge thereof, and wherein said aligned notches have positioned therein a riser cord and a lift cord.

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